

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

**LIBERTY MUTUAL INSURANCE
COMPANY,**

Plaintiff,

vs.

**JERRY SCHEIB, LORETTA
SCHEIB, and DORIS BURNS**

Case No. 1:09-CV-271

Chief Judge Curtis L. Collier

**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE
AS TO DEFENDANTS JERRY SCHEIB AND LORETTA SCHEIB**

COMES NOW Plaintiff, by and through its undersigned counsel, and responds to this Court's Order of April 20, 2010 (Docket No. 14). This Court ordered on April 20, 2010, that Plaintiff (1) serve Jerry Scheib and (2) ensure Loretta Scheib answers the Complaint or move for default against her. If those two items had not occurred, Plaintiff was ordered to appear for an Order to Show Cause hearing on May 26, 2010. Plaintiff was also asked to call the Court's office and speak with Sheila Hendrix if either of these were accomplished and, if so, the hearing would be cancelled.

This day, May 24, 2010, Plaintiff's counsel called Ms. Hendrix at the Court's office to inform the Court of Plaintiff's intention of voluntarily dismissing Jerry Scheib and Loretta Scheib. Plaintiff's counsel was informed that the hearing would, therefore, be cancelled. Accordingly, in response to the Court's Order and as grounds for its Notice of Voluntary Dismissal against Jerry Scheib and Loretta Scheib pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Plaintiff states as follows:

A. Loretta Scheib

1. In response to the Court's April 20, 2010, Order, Plaintiff, through counsel, again contacted bankruptcy counsel for Loretta Scheib. He did not respond.

2. As stated before to this Court, Loretta Scheib has filed for bankruptcy protection and has received her discharge, save any debts excepted from discharge pursuant to 11 U.S.C. § 523.. Plaintiff has filed an adversary proceeding against Loretta Scheib (a/k/a Loretta Hart) in her bankruptcy case, which adversary proceeding is pending in the United States Bankruptcy Court for the Eastern District of Tennessee. In that case, Plaintiff seeks a money judgment and an order finding that the debt should be excepted from discharge based upon the same facts as alleged in this case.

3. Plaintiff will proceed against Ms. Scheib in her bankruptcy case through the pending adversary proceeding.

B. Jerry Scheib

4. Plaintiff had a third Alias Summons issued for Jerry Scheib and also hired a private investigator to locate Mr. Scheib.

5. All efforts to find and serve Mr. Scheib have been unsuccessful. The last attempt involved, among other tactics, sending the summons and complaint to a Post Office box which was believed to belong to Mr. Scheib. That package was signed for and picked up just recently, but it was not signed by Mr. Scheib.

6. If Mr. Scheib is located, Plaintiff may re-file its action against Mr. Scheib.

WHEREFORE, for the foregoing reasons, Plaintiff provides notice that this case is hereby dismissed voluntarily without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure as to Defendants Jerry Scheib and Loretta Scheib.

Respectfully submitted,

BURCH, PORTER & JOHNSON
a Professional Limited Liability Company

/s/ Scott J. Crosby

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Attorney for Plaintiff

Certificate of Service

I hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing document to Doris Burns, 470 Covenant Drive NE, Cleveland, Tennessee 37323, and Jeanie Scheib, a/k/a Loretta J. Hart, 330 Covenant Drive NE, Cleveland, Tennessee 37323.

This 24th day of May, 2010.

/s/ Scott J. Crosby

Scott J. Crosby